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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,446	06/24/2003	Kelly S. Stack	STK-001	9380

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IMPERIUM PATENT WORKS
P.O. BOX 587
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EXAMINER	
SONNETT, KATHLEEN C	
ART UNIT	**PAPER NUMBER**
3731	
MAIL DATE	**DELIVERY MODE**
02/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/602,446	**Applicant(s)** STACK, KELLY S.	
	Examiner Kathleen Sonnett	**Art Unit** 3731	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-20*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

GLENN K. DAY
PRIMARY E...

Continuation of 3. NOTE: The amendments filed on 1/16/2007 have the added limitation of a non-absorbent material which would require further consideration and search and therefore will not be entered.
The examiner would like to address the following arguments: Applicant argues that the device of McKay (U.S. 5,305,470) would never be used on an infant because it is used for competitive sports. However, the device of McKay is used for cooling the wearer and one would be motivated to use the device any time that a wearer is overheated. This is not limited to overheating associated with competitive sports. Infants and small children may become overheated on a hot day or if they have a fever.
Applicant also argues that the device of McKay as modified by Wilson does not make obvious attaching the device to an infant's wrist and only discloses attaching the device to a child's wrist. The examiner believes applicant's interpretation of child as mentioned in Wilson (U.S. 2004/0098073) is too narrow. No ages are indicated in the instant specification for the term "infant" and it seems to the examiner that a 1 or 2 year old, for example, could be called a child or an infant.
Furthermore, no indication of the fit of the bracelet or any dimensions are present in the claims. For example, independent claim 1 only indicates that the bracelet is "adapted to be attached around an infant's wrist". If the device of McKay as modified Wilson can attach to a child's wrist, it can be put around an infant's wrist. Also, the wrist of a very small three or four-year old may be the same size as the wrist of a large 18-month old.
Applicant also argues that there is nothing in the references of McKay or Wilson that suggests sucking on the capsules which fill the device. However, the language "adapted to be sucked on" means that it can be sucked on and therefore limits the device only so far as that the user can suck on the device. With this language, the references do not need to disclose the step of sucking on the capsules. Regarding the method claim 11, the limitation of the actual step of sucking on the capsule is not included, only that it "is adapted to allow the infant to suck on the capsule".
The device of McKay and Wilson has pea size capsules ([0042] of Wilson) and even when covered by material, can certainly be sucked on through the fabric. It is noted that the phrase "adapted to be sucked on" does not add any size limitation. In other words, a person can suck on their arm or a breath-mint. Sucking on something is not limited to having the entire item in your mouth.